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18 ORACLE AMERICA, INC.

19 UNITED STATES DISTRICT COURT
20 NORTHERN DISTRICT OF CALIFORNIA
21 SAN FRANCISCO DIVISION

22 ORACLE AMERICA, INC.

Case No. CV 10-03561 WHA

23 Plaintiff,

**ORACLE AMERICA'S NOTICE OF
MOTION AND MOTION FOR
ADMINISTRATIVE RELIEF
REGARDING STATEMENT TO
JURY**

24 v.

25 GOOGLE INC.

26 Defendant.
27
28 Dept.: Courtroom 8, 19th Floor
Judge: Honorable William H. Alsup

1 PLEASE TAKE NOTICE THAT Oracle America, Inc. (“Oracle”) will, and hereby does,
2 respectfully move for administrative relief to supplement this statement to the jury, “The names
3 of the various items appearing in the disputed API package specifications, such as names of API
4 files, packages, classes, and methods, are not protected”, with the following proposed language:

5 The selection or arrangement of the names of the various items in the API package
6 specifications may still be protected by copyright if those names are numerous
7 enough and their selection and arrangement original enough that their combination
constitutes an original work. The Court will instruct the jury on this issue
following the close of evidence.

8 This Motion is based on the accompanying Memorandum of Points and Authorities, Declaration
9 of Marc Peters, and the entire record in this case.

10

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Dated: April 12, 2011

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By: /s/ Michael A. Jacobs

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

22 ORACLE AMERICA, INC.
23 Plaintiff,
24 v.
25 GOOGLE INC.
26 Defendant.

Case No. CV 10-03561 WHA

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
ORACLE AMERICA'S MOTION
FOR ADMINISTRATIVE RELIEF
REGARDING STATEMENT TO
JURY**

Dept.: Courtroom 8, 19th Floor
Judge: Honorable William H. Alsup

1 **I. INTRODUCTION**

2 In light of the Court's Order Granting in Part Google's Motion to Deem Issues
3 Undisputed, Oracle moves for an order to supplement this statement to the jury: "The names of
4 the various items appearing in the disputed API package specifications, such as names of API
5 files, packages, classes, and methods, are not protected." (ECF No. 896.) Immediately after this
6 statement, the jury should also be told:

7 The selection or arrangement of the names of the various items in the API package
8 specifications may still be protected by copyright if those names are numerous
9 enough and their selection and arrangement original enough that their combination
10 constitutes an original work. The Court will instruct the jury on this issue following
11 the close of evidence.

12 As shown below, the core of Oracle's proposed follow-on statement is drawn directly from the
13 Court's summary judgment order regarding the copyright claim. (ECF No. 433.) More
14 importantly, the proposed follow-on statement is necessary to avoid jury confusion. Before filing
15 this motion, Oracle proposed the follow-on statement to Google. It refused Oracle's request for a
16 stipulated statement to the jury.

17 **II. ARGUMENT**

18 Oracle submits that the jury should hear this complete and balanced statement of the
19 Court's summary judgment ruling:

20 The names of the various items appearing in the disputed API package specifications,
21 such as names of API files, packages, classes, and methods, are not protected.

22 The selection or arrangement of the names of the various items in the API package
23 specifications may still be protected by copyright if those names are numerous
24 enough and their selection and arrangement original enough that their combination
25 constitutes an original work. The Court will instruct the jury on this issue following
26 the close of evidence.

27 The latter, proposed follow-on statement is needed to avoid jury confusion. If the jury will be
28 told part of the Court's ruling as a pre-instruction at the outset of the trial, completeness requires
29 that they be told the rest of the ruling, and that the jury will also be instructed further at the close
30 of evidence. Otherwise, the jury will not get the whole description of what is at issue, and there is
31 a significant risk that they will believe that no aspect of the names of the elements in the API
32 package specifications may be protectable under copyright law, which is incorrect and contrary to
33 the Court's summary judgment ruling.

1 the Court's ruling. The jury will not appreciate, much less understand, that they should wait for
 2 the Court to instruct them further.

3 The sequencing of this complete statement of ruling, and its core language, are drawn
 4 directly from the Court's summary judgment order:

5 In finding that the *names of the various items appearing in the disputed API*
 6 *package specifications are not protected by copyright*, this order does *not foreclose*
 7 *the possibility that the selection or arrangement of those names is subject to*
 8 *copyright protection*. See Lamps Plus, Inc. v. Seattle Lighting Fixture Co., 345 F.3d
 9 1140, 1147 (9th Cir. 2003) ("[A] combination of *unprotectable elements* is eligible
 10 for copyright protection only *if those elements are numerous enough and their*
 11 *selection and arrangement original enough that their combination constitutes an*
 12 *original work* of authorship.") (emphasis added).

13 (ECF No. 433 at 8 (bolded italics added). As such, Oracle's proposed follow-on statement
 14 accurately reflects the Court's order on summary judgment. (If the Court prefers, Oracle is
 15 willing to adopt the wording of the summary judgment order verbatim.) Thus, the same rationale
 16 for instructing the jury on the unprotectability of API names applies equally for giving Oracle's
 17 proposed follow-on statement. (ECF No. 896.) Lastly, Oracle's proposed follow-on statement is
 18 needed to present the hotly disputed copyrightability issue in a fair and balanced way.

19 In the alternative, it would eliminate the risk of jury confusion if the Court would refrain
 20 from reading to the jury, or permitting Google to refer to, the statement regarding the
 21 uncopyrightability of names until the Court is ready to instruct the jury on what is copyrightable.

22 III. CONCLUSION

23 For the reasons above, directly following this statement to the jury, "The names of the
 24 various items appearing in the disputed API package specifications, such as names of API files,
 25 packages, classes, and methods, are not protected," the jury should also be told: "The selection or
 26 arrangement of the names of the various items in the API package specifications may still be
 27 protected by copyright if those names are numerous enough and their selection and arrangement
 28 original enough that their combination constitutes an original work. The Court will instruct the
 jury on this issue following the close of evidence."

1 Dated: April 12, 2012

MORRISON & FOERSTER LLP

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ORACLE AMERICA, INC.

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